

# SENATE BILL REPORT

## ESHB 2246

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As of February 20, 2014

**Title:** An act relating to financing for stewardship of mercury-containing lights.

**Brief Description:** Regarding financing for stewardship of mercury-containing lights.

**Sponsors:** House Committee on Environment (originally sponsored by Representatives S. Hunt, Fitzgibbon, Hudgins, Morris, Ryu, Roberts, Bergquist, Goodman and Pollet).

**Brief History:** Passed House: 2/13/14, 56-41.

**Committee Activity:** Energy, Environment & Telecommunications:

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### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

**Staff:** Jan Odano (786-7486)

**Background:** All mercury-containing lights must be recycled beginning January 1, 2013. Mercury-containing lights may not be disposed of in waste incinerators or landfills. Every producer of mercury-containing lights sold in or into Washington for residential use must fully finance and participate in a product stewardship program; financing includes the Department of Ecology's (DOE's) costs for administering and enforcing the program.

A producer, wholesaler, retailer, or distributor may not offer for sale or distribute mercury-containing lights, e.g. lamps, bulbs, tubes, or other devices containing mercury and providing illumination, unless the producer is participating in an approved product stewardship program. All product stewardship organizations must be approved and contracted by DOE but the product stewardship program is operated by a product stewardship organization. Product stewardship programs must be fully implemented by January 1, 2013.

In November 2012, DOE adopted rules to implement the mercury-containing lights stewardship program. The rules became effective in December 2012. The rules set forth responsibilities of producers, wholesalers, retailers, and distributors of mercury-containing lights. It also provided requirements for product stewardship plans, outreach and education, and annual reporting. The rules also provided information on producers' responsibilities for funding the product stewardship program and included a requirement that mercury-containing light producers, collectively, fully finance the operations of the stewardship program.

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Producers electing to develop their own stewardship plan must cover DOE's administrative costs by an annual \$5,000 registration fee. Producer-developed stewardship plans must include a mechanism for fully allocating the program's operational costs among producers. Producers that do not develop a DOE-approved plan must participate in a state-contracted plan. Under a state-contracted plan, DOE charges producers a fee of \$15,000, of which \$5,000 is retained to cover administrative costs, and the remainder contracted for a program operated by a product stewardship organization. Under both the producer-developed plan scenario and the state-contracted plan scenario, anyone may dispose of up to 15 lights every 90 days for free through the stewardship program.

In December 2012, the National Electrical Manufacturers Association (NEMA) filed suit, challenging DOE rules. The suit, in part, challenged the establishment of the funding mechanism for the mercury-containing light stewardship program.

In May 2013, a state superior court judge ruled that the part of DOE's 2012 rule that requires mercury-containing light producers to fully finance a stewardship program was inconsistent with the mercury-containing lights law passed by the Legislature. Instead, the judge found that the mercury-containing lights statute capped the fees charged to light producers at \$15,000 per light producer. The judge's decision is currently under appeal by DOE. The stewardship program is currently on hold, and no mercury-containing light stewardship program is operating pursuant to the law.

**Summary of Bill:** All producers of mercury-containing lights sold in the state must participate in a stewardship program operated by a stewardship organization. A stewardship program must accept up to ten lights per day from household generators or others who make retail purchases of lights. Producers must ensure that the stewardship organization submits a stewardship plan by June 1 of the year prior to implementation. The plans must include a description of collection opportunities, waste prevention, and recycling; as well as information on the environmental handling charge.

A stewardship organization must pay all program administrative and operational costs through an environmental handling charge.

The environmental handling charge:

- must cover the stewardship program's operational and administrative costs, plus a reserve;
- must be added to the price of mercury-containing lights sold at retail;
- may, but is not required to, vary by the type of mercury-containing light; and
- must be added to the price of mercury-containing light sales from producers to retailers, who must add the handling charge to the cost of the products they sell at retail. Producers must remit the environmental handling charge to the stewardship organization, unless a light retailer purchasing the producer's lights has voluntarily agreed to directly remit the environmental handling charge to the stewardship organization on behalf of the producer.

Retailers may retain a portion of the environmental handling charge to defray their handling charge collection and remittance costs if they have a voluntary agreement with a stewardship

organization to directly remit environmental handling charges to the stewardship organization rather than to light producers.

The stewardship organization, using funds from the environmental handling charge, must pay \$5,000 per participating producer to DOE to cover their administration and enforcement costs. Stewardship organizations may offer incentives or payments to mercury-containing light collectors.

When a stewardship organization submits an operational plan to DOE, it must describe how the environmental handling charge is determined as well as the mechanism established to collect and remit the charge to the stewardship organization. The plan must also include a description of how the program informs consumers about:

- the environmental handling charge added to the purchase price of mercury-containing lights;
- mercury-containing light collection opportunities; and
- the promotion of recycling and waste reduction.

The stewardship organization, in consultation with collectors, retailers, recyclers, and participating producers, must recommend to DOE an amount for the environmental handling charge. In determining the amount of the environmental handling charge, the stewardship organization must consider the following:

- the anticipated number of mercury-containing lights sold at retail;
- the expected number of mercury-containing lights to be collected for recycling;
- the costs of picking up, transporting, and recycling mercury-containing lights generated by households and retail purchasers of lights;
- the costs of the fee to be paid to DOE; and
- other program costs, including public outreach.

If a stewardship organization's recommended environmental handling charge is sufficient to cover the stewardship program operations and DOE's administrative costs, DOE must approve the charge within 60 days of receipt of the recommendation. DOE may adjust the amount of the handling charge recommended by the stewardship organization if necessary. Procedures are also established for the periodic adjustment of the amount of the environmental handling charge.

The stewardship organization's administrative and operational costs are not required to include a collection location's costs of receiving, accumulating, and storing mercury-containing lights, and does not include costs for curbside and mail-back collection programs. However, a stewardship program must pay for packaging and shipping materials used by collection sites, and for transportation and processing costs associated with the lights collected at collection locations.

The stewardship organization must submit an annual report that includes an independent financial audit and other financial information that includes program costs and operations, the amount of environmental handling charge assessed and revenue generated, and total sales of lights sold into the state. DOE may adopt rules for program reporting requirements and must make annual reports available for public review with the exemption of any confidential portions of the reports.

The mercury-containing lights stewardship law undergoes a sunset review by the Joint Legislative Audit and Review Committee on July 1, 2025. Without legislative action to extend the program, the mercury-containing lights stewardship law is repealed effective July 1, 2026. In the event that the mercury-containing light stewardship program is repealed, state law would retain the requirement to recycle mercury-containing lights. State law would also retain the prohibition on mercury-containing light disposal via incineration, waste-to-energy, or landfills.

The Legislature states its intention to exempt mercury-containing light producers, stewardship organizations, distributors, and retailers from state and federal antitrust laws for the purposes of the stewardship program. DOE must actively supervise the conduct of the producers and the stewardship organization.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.